By section 11(2) of our Evidence Ordinance —

"Facts not otherwise relevant are relevant if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable."

The fact in issue was whether, upon the dates referred to in the charges, Federation driving licences were produced to the appellant or not. Does the fact that on the eight previous occasions the appellant made similar endorsements without any Federation driving licences being produced make it "highly probable" that no Federation driving licences were produced upon the two dates which are material to these charges? Or does it merely tend to prove that the appellant, having done this before, is the sort of man who would probably do it on the two occasions charged? As Lord Sumner said in *Thompson v. The King*[2] :—

"No one doubts that it does not tend to prove a man guilty of a particular crime to show that he is the kind of man who would commit a crime, or that he is generally disposed to crime and even to a particular crime; but, sometimes for one reason sometimes for another, evidence is admissible, notwithstanding its general character, to show that the accused had in him the makings of a criminal, for example, in proving guilty knowledge, or intent, or system, or in rebutting an appearance of innocence which, unexplained, the facts might wear."

I have come to the conclusion that the evidence which is objected to went far beyond showing that the appellant, having committed similar acts previously, was a person who was likely to have committed the two acts with which he was charged, and that the evidence of the previous eight cases was relevant to the issue which was before the Court. The defence was that the prosecution witnesses were lying when they said that they had produced no Federation driving licences, and that they had produced licences which he believed to be genuine but which were in fact forgeries. If they were forgeries, this evidence showed that on 10 occasions within the space of five weeks he was taken in by forged licences; and the appellant admitted to seeing an average of only 4 or 5 Federation driving licences in the course of a day. The issue was: did he make the two false statements with which he was charged knowing that they were false? His defence was: "I made them, but I was deceived by forgeries." It seems to me to be impossible to say that the fact that he had done the same thing eight times within a month immediately prior to the two occasions on which he was charged was irrelevant to the issue of whether he made the two false endorsements knowing that they were false.

There only remains to consider ground 4 of the appeal, which is that all the eight witnesses who were the appellants in the "similar acts" evidence were accomplices and that the learned District Judge did not address his mind to that fact. It is clear, upon the authority of *Rex v. Mohamed Farid*[3] that although the eight witnesses took part in different transactions from those with which the appellant was charged they must be regarded as accomplices, and that the learned District Judge, who was not referred to the case of *Rex v. Mohamed Farid*[3], did not appreciate that fact. But in five of the eight cases the number of the licence which the appellant had inserted in the application form was proved to belong to a different person, thus providing the plainest possible corroboration of the witnesses' story.

The appeal must be dismissed.

Appeal dismissed.

Solicitors for the appellant: *C. H. Koh & Co.*

NANYANG MANUFACTURING CO. v. THE COLLECTOR OF LAND REVENUE, JOHORE.

[A. C. J. (Buhagiar, J.) December 13, 1953]

[Johore Bahru — Land Reference No. 5 of 1953]

Land laws — Land acquisition — Fair market value, what is — Methods of valuation — Expert opinion — Safest test.

This was a reference to Court of an award made by the Collector regarding the acquisition of land required for the University of Malaya. The land consisted of 20 out of over 33 acres held by the applicants and most of the area acquired is mainly shallow ravine and was less accessible than the portion left out.

The only point for the determination of the Court was what was the fair market value under section 29(1)(a) of the Land Acquisition Enactment on the date of publication of the Declaration under section 6.

Held, following the definition in **Kailas Chandra v. Secretary of State**[1]: the market value of land may be roughly described as the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for sale and purchase of the land.

In arriving at this price there are 3 recognised methods of valuation, viz:

(1) opinion of experts;

(2) the price paid, within a reasonable time, in **bona fide** transactions of purchases of lands acquired, or of the lands adjacent to the land acquired and possessing similar advantages; and

(3) a number of years' purchase of the actual or immediately prospective, profit from the lands acquired.

In considering expert opinion too much weight should not be given unless it is supported by, or coincides with, other evidence. Neither should the Court consider an offer to purchase. The safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances.

Cases referred to:—

(1) *Kailas Chandra v. Secretary of State*, 17 Cal. L.J. 35;

(2) *Harish Chundar Neogy v. Secretary of State,* 11 C.W.N. 876.

(3) *Govt. of Bombay v. Merwanji Muncherji,* 10 Bom. L.R. 919.

LAND REFERENCE.

J. K. Gale for the applicants.

M. Suffian (Federal Counsel) for the respondent.

Cur. Adv. Vult.

Buhagiar, J. : — This is an objection against the award of the Collector of Land Revenue, Johore, referred to Court under section 22 of the Land Acquisition Enactment, 1936 (No. 16 of 1936) in respect of the compulsory acquisition by the Government of Johore of twenty acres of land, being part of land the total area of which is 33 acres, 1 rood, 5 poles held under grant 19813 Lot 2839, Township of Johore Bahru, by Nanyang Manufacturing Company of 51 Jalan Yahya Awal, Johore Bahru (hereinafter referred to as the Objectors). The Objectors acquired the property on the 30th April, 1949. The property is situated at Jalan Abdul Samad about 2½ miles from the General Post Office, Johore Bahru; it has a road frontage along Jalan Abdul Samad for a distance of twelve chains on the west side and is bounded on the north by lot 2838 and on the east it is close to Jalan Yahya Awal, the distance being twelve chains from the boundary to Jalan Yahya Awal; on the southern side are Kampong Tarom lot Nos. 1577, 1146 and 1578.

The necessary declaration under section 6 of the Land Acquisition Enactment, 1936, is dated the 12th April, 1952, and was published in the Johore Government Gazette on the 26th April, 1952. The notice in accordance with sections 9 and 10(1) of the said Enactment dated the 1st July, 1952, stating that the Government intended acquiring 20 acres of the said land was posted and duly served on the Objectors during the month of July, 1952. The land is required for the purposes of the University of Malaya; possession of the land has not been taken by the Government.

In reply to the said Notice of the 1st July, 1952, the Objectors wrote to the Collector of Land Revenue stating that a reasonable offer for the land to be acquired was sixty cents per square foot.

The date for the commencement of the enquiry before the Collector according to the Notice under sections 9 and 10(1) of the Enactment was the 3rd August, 1952; the enquiry, however, did not take place before the Collector until the 5th August, 1952, at which the Objectors were represented by Mr. Robert T. L. Khor. At this enquiry Mr. Khor stated that the claim of the company had been put fully in the letter to the Collector, dated the 28th July, 1952, and that he had nothing to add to the statement contained in that letter. The enquiry was adjourned for award and, on the 21st December, 1952, the Collector made an award of four thousand dollars ($4,000) per acre. On the 30th December, 1952, the Collector offered eighty thousand dollars ($80,000) as full compensation for the land acquired.

On the 2nd February, 1953, the Objectors required the Collector that the award made by him be referred for the determination of the Court pursuant to the provisions of section 22(1) of the Enactment as they objected to the amount of compensation specified in the said award.

The reference to the Court under section 22 of the Enactment was made by the Collector in August, 1953, and in this reference he made his grounds for the award as follows :—

"This land was bought by the present owners for $750 per acre on 30th April 1949, and consists largely of shallow ravine. The best part of the land is now occupied by a shoe factory, whereas the area acquired is mainly the shallow ravine. The area acquired is less accessible than the portion left out and has only a short road frontage along Jalan Abdul Samad. The contour of the area would make it expensive to develop. On the other hand, the remaining portion would undoubtedly increase in value as a result of the use to which the acquired portion would be put. About ½ a mile from this land there is a piece of land 8 acres 1 rood 20 poles in area which has road frontage on Jalan Larkin, one of the access roads leading to Johore Bahru. The latter land has been bought by its present owner in portions between November 1951 and April 1953, the total price paid being $30,000. This is less than $3,600 per acre. Immediately to the south of lot 2839 there is a piece of land 25.812 acres in area which has ½ a mile of good road frontage on each of 2 roads and is covered with houses. This land was bought by its present owners, Lee Brothers (Wee Kee Limited) on 30th May 1950 for $10,500 i.e. just over $400 per acre. The land is held under 99 years lease, which at the time of the purchase still had more than 51 years to run.

In view of the above consideration, I am of the opinion that $4,000 per acre for lot 2839 would be the fair market value of the area acquired as on the 26th April 1952."

In accordance with section 25 of the Enactment, the Court appointed Mr. Cheong Thiam Siew and Mr. Teo Yeok Soon as Assessors.

This reference came up for hearing on the 29th November, 1953. Mr. Gale appeared for the Objectors and Inche Suffian appeared for the Collector. Copies of sections 29, 30 and 31 were given to the Assessors; the provisions of these sections were read out in Court by Mr. Gale who submitted that the only question in this reference was the determination of the fair market value under section 29(1)(a) as on the

26th day of April 1952. I was satisfied that the Assessors understood the provisions of the said sections and that no detailed explanation was necessary. In the course of Mr. Gale's submissions the Assessors felt the necessity (notwithstanding that proper plans had been filed) to visit the land. I agreed that it was advisable so to do and on the same day I and the Assessors and the parties and their Counsel visited the land in question and other lands in the vicinity, and Counsel for the parties had the opportunity of pointing out various matters regarding such lands which were referred to later in the arguments before the Court.

As regards the directions contained in section 29(1) of the Enactment, Mr. Gale, for the Objectors, stated that he was relying only on paragraph (a), that is to fair market value as at the 26th April, 1952, the date of publication of the Declaration under section 6 of the Enactment.

"Market value" is not defined or interpreted in the Enactment, but in view of the provisions of section 30(b) of the Enactment which states that the Court in determining the amount of compensation to be awarded must not take into consideration "any disinclination of the person to part with the land acquired", I accept the definition of Jenkins, C.J. in *Kailas Chandra v. Secretary of State*[1] :—

> "The market-value of land may be roughly described as the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land."

Evidence was produced by the Objectors and by the Collector relating to comparable sales; the evidence consisted in documents to show the purchase price paid for land adjoining and in the vicinity of the land in question. For the Objectors evidence was also given regarding an offer they had in December 1950, from Dr. Tan Eng Han to purchase ten acres of the land in question at fifty cents per square foot and Mr. R. Vaithyalingham also gave his opinion as to the value of the land in question.

The recognized methods of valuation of land acquired under land acquisition legislation may be classified under three heads :—

(1) the opinion of experts or valuators;

(2) the price paid, within a reasonable time, in *bona fide* transactions of purchases of the lands acquired, or of the lands adjacent to the land acquired and possessing similar advantages; and

(3) a number of years' purchase of the actual, or immediately prospective, profit from the lands acquired. (See *Harish Chundar Neogy v. Secretary of State*[2]).

With regard to evidence of experts I adopt the view expressed in the above mentioned case, at p. 877, that "estimates are undoubtedly some evidence but their value is not great, as expert opinion is liable to err, unless it is supported by, or coincides with, other evidence". I consider that the evidence of Mr. Vaithyalingham is based on the valuation of other lands in the vicinity which for the reasons set out later do not bear a perfect comparison with the land in question and therefore loses most, if not all, of its value.

I consider also that the evidence given with regard to the offer made by Dr. Tan Eng Han to purchase ten acres of the land in question should be disregarded; as stated in *Government of Bombay v. Merwanji Muncherji*[3] :—

> "An offer does not come within the category of sales and purchases. If an offer for the whole or a portion of the land under acquisition is proved, it amounts merely to an expression of opinion on the part of the offeror."

I consider that the safest guide to determine the fair market value is evidence of sales of the same land or similar land in the neighbourhood, after making due allowance for all the circumstances.

In applying this test to the present case, we find that some of the plots of land in the neighbourhood to which reference has been made by the Objectors and by the Collector do not strictly bear comparison to the land in question, either because the area thereof involved is small or because they are different topographically.

The Assessors have both let me have copies of their written opinions which they have just read out in Court. After discussion we have agreed at a figure of $4,600 per acre.

My decision is, therefore, that the Collector of Land Revenue's value should be revised by increasing the award by $12,000 so that the award will be $92,000 as compensation for the land acquired.

Under section 35 of the Enactment, I direct that the Assessors be paid a fee of $200 each.

No order for costs.

Cheong Thiam Siew and *Teo Yeok Soon*, Assessors, concurred.

Order accordingly.

Solicitors for the applicants: *Sisson & Delay.*